

the Board by argument for its admissibility, or arguments upon any point not properly calling for determination. He shall not introduce into an argument remarks or statements intended to influence the bystanders.

(e) A practitioner shall rely on his judgment concerning matters incidental to the trial which may, in some cases, affect the proceeding. For example, a practitioner should not force a matter to trial when there is affliction or bereavement on the part of the opposing practitioner if no harm will come from postponing the proceeding.

(f) A practitioner shall not ignore known customs or practice of the Board, even when the law permits, without giving timely notice to the opposing practitioner.

(g) Insofar as is possible, important agreements affecting the rights of the clients should be made in writing. It is, however, dishonorable to avoid performance of an agreement fairly made only because it is not made in writing.

**§ 1103.28 Negotiations with opposing party.**

A practitioner shall not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party. He shall not negotiate or make compromises with the other party, but shall deal only with the opposing practitioner. The practitioner shall avoid everything that may tend to mislead a party not represented by a practitioner and should not advise that party as to the law.

**§ 1103.29 Public communication and solicitation.**

(a) A practitioner shall not make any public communication or solicitation for employment containing a false, fraudulent, misleading, or deceptive statement or claim. This prohibition includes, but is not limited to:

(1) The use of statements containing a material misrepresentation of fact or omission of a material fact necessary to keep the statement from being misleading;

(2) Statements intended or likely to create an unjustifiable expectation;

statements of fee information which are not complete and accurate;

(3) Statements containing information on past performance or prediction of future success;

(4) Statements of prior Board employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner;

(5) Statements containing an opinion as to the quality of a practitioner's services, or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format.

(b) A practitioner shall not solicit a potential client who has given the practitioner adequate notice that he does not want to receive communications from the practitioner, nor shall a practitioner make a solicitation which involves the use of undue influence.

(c) A practitioner shall not solicit a potential client who is apparently in a physical or mental condition which would make it unlikely that he could exercise reasonable, considered judgment as to the selection of a practitioner.

(d) A practitioner shall not pay or otherwise assist any other person who is not also a practitioner and a member or associate of the same firm to solicit employment for the practitioner.

(e) If a public communication is to be made through use of radio or television, it must be prerecorded and approved for broadcast by the practitioner. A recording of the actual transmission must be retained by the practitioner for a period of 1 year after the date of the final transmission.

(f) A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement.

(g) A practitioner shall not compensate or give anything of value to a representative of any communication medium in anticipation of or in return for professional publicity in a news item.

**§ 1103.30 Acceptance of employment.**

(a) The practitioner must decline to conduct a case or to make a defense

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when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. Otherwise, it is the practitioner's right, and having accepted retainer, it becomes the practitioner's duty, to insist upon the judgment of the Board as to the merits of the client's claim. The practitioner's acceptance of a case is equivalent to the assertion that the client's case is proper for determination.

(b) No practitioner is obliged to act either as adviser or advocate for every potential client. The practitioner has the right to decline employment. Every practitioner shall decide what employment he will accept, what cases he will bring before the Board for complainants, or contest for defendants or respondents.

### **§ 1103.31 Responsibility for litigation.**

The practitioner bears the responsibility for advising as to questionable transactions, bringing questionable proceedings, or urging questionable defenses. Client's instructions cannot be used as an excuse for questionable practices.

### **§ 1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.**

(a) The practitioner, upon detecting fraud or deception practiced against the Board or a party in a case, shall make every effort to rectify the practice by advising his client to forgo any unjustly earned advantage. If such advice is refused, the practitioner should inform the injured party or that party's practitioner so that appropriate steps may be taken.

(b) Practitioners shall expose without fear or favor before the proper tribunals any corrupt or dishonest conduct and should accept without hesitation employment against a practitioner who has wronged his client. The practitioner upon the trial of a case in which perjury has been committed owes it to the Board and to the public to bring the matter to the knowledge of the prosecuting authorities.

### **49 CFR Ch. X (10-1-07 Edition)**

### **§ 1103.33 Responsibility when proposing a person for admission to practice before the Board.**

The practitioner shall aid in guarding the bar of the Board against admission of candidates unfit or unqualified because deficient in either moral character or qualification. A practitioner shall propose no person for admission to practice before the Board unless from personal knowledge or after reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in § 1103.3.

### **§ 1103.34 Intermediaries.**

(a) The services of a practitioner should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and practitioner. The responsibility and qualifications of the practitioner are individual. The practitioner shall avoid all relations which direct the performance of his duties in the interest of such intermediaries. The practitioner's relationship and responsibility to the client should be direct.

(b) The practitioner may accept employment from any organization (such as an association, club or trade organization) authorized by law to be a party to proceedings before the Board, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to the individual affairs as are consistent with the free and faithful performance of his duties to the Board.

(c) Nothing in this canon shall be construed as conflicting with § 1103.20(d).

### **§ 1103.35 Partnership or professional corporation names and titles.**

In the formation of a partnership or professional corporation among practitioners care should be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not duly authorized to practice. No person should be held as a practitioner who is not duly qualified under § 1103.2 or § 1103.3 of these rules.